

**Opinion No. 165.****Taxation—Assessment of Mineral  
Reservation—Cancellation of.**

HELD: Where, in the transfer of real estate, mineral rights have been reserved and the reservation has been placed on the tax roll and assessed separately from the land but later such reservation has been deeded to the grantee of the land, and it appears that the value of such assessment was not deducted from the assessed value of the land, the county commissioners may order the cancellation of the assessment against the mineral reservation.

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November 10, 1939.

Hon. W. A. Brown  
State Examiner  
The Capitol

Dear Mr. Brown:

You have submitted this question:

Where, in a transfer of real estate, mineral rights have been reserved and the mineral reservation was placed on the tax roll and assessed separately but later has been deeded to the grantee of the land itself, may the assessment of such reservation be cancelled when it appears that the value of the mineral reservation was not deducted from the assessed value of the land itself, and there would therefore be a double assessment, you state:

“At the time that the mineral reservation was placed upon the tax roll, the value of such was not deducted from the value of the land

itself, and for that reason, it would appear that the mineral reservation has been doubly assessed, having been included in the land assessment and also in a separate mineral reservation assessment. If this contention is correct, I believe the county commissioners would be authorized to cancel this double assessment, which would rectify the entire matter. If they can not do this, the only other solution apparently would be to go through the procedure of taking tax deed to this mineral reservation, which would result in a great cost to the land owner or the county. The reservation itself is of little or no value. The commissioners in all instances feel that a double assessment had been made and are perfectly willing to cancel the mineral reservation assessment if they have that authority."

Section 2222, R. C. M., 1935, permits the refunding of taxes paid more than once or erroneously collected. If the grantee of the land was erroneously assessed for, and paid taxes on the mineral reservation, if he should again pay them it would seem that he would be entitled to a refund under the provisions of this section. If he would be entitled to a refund such taxes should not be collected and if they should not be collected the assessment should be cancelled. The assessments on such reservation have therefore become *functus officio*, and there remains no reason why they should not be cancelled. See Volume 15, Opinions of Attorney General, 116; compare Volume 16 Opinions of Attorney General, 101.